



MEMORANDUM OF AGREEMENT
Between
WASHINGTON STATE PARKS AND RECREATION COMMISSION
And
US FISH AND WILDLIFE SERVICE
SPRING CREEK NATIONAL FISH HATCHERY



AGREEMENT# IA 709-125
ARBORICULTURE ASSISTANCE

THIS AGREEMENT is made and entered into by and between the Washington State Parks and Recreation Commission, hereinafter referred to as "PARKS," and the U.S. Fish and Wildlife Service – Spring Creek National Fish Hatchery hereinafter referred to as the "HATCHERY".

IT IS THE PURPOSE OF THIS AGREEMENT to provide the professional expertise that does not exist within the limited staff availability of the HATCHERY, and that PARKS can perform on a mutually beneficial basis.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

PARKS shall furnish the necessary personnel, equipment, material, and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in **Exhibit "A"** attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall cover any work in furtherance of this agreement, and be completed no later than April 30, 2008, unless terminated sooner as provided herein. Agreement shall automatically expire on June 30, 2009, unless otherwise extended by amendment.

PAYMENT

Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed **Three Thousand, and No/100ths Dollars (\$3,000.00)**. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded. Compensation for services shall be based on the following rates and in accordance with the following terms, or as set forth in accordance with the budget in **Exhibit "B"** which is attached hereto and incorporated herein.

BILLING PROCEDURE

PARKS shall submit invoices no more often than monthly. Payment to PARKS for approved and completed work will be made by warrant or account transfer by the HATCHERY within 30 days of receipt of the invoice. Upon expiration of the contract, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

RECORDS MAINTENANCE

The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by PARKS. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party.

to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board.

The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and
- c. any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other

understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

PROJECT MANAGEMENT

The project representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Project Representative for PARKS is: Peter Carris, Forestry Natural Resource Program Manager, (360) 902-8593

The Project Representative for the HATCHERY is: Larry Marchant, Hatchery Manager, (509) 493-1730

IN WITNESS WHEREOF, the parties have executed this Agreement.

**Washington State Parks and
Recreation Commission**

By: _____

Title: Assistant Director, WSPRC

Date: _____

**U.S. Fish and Wildlife Services
Spring Creek National Fish Hatchery**

By: _____

Title: _____

Date: _____

Approved As To Form:
Mark Schumock
Asst. Attorney General
02/20/05

Exhibit "A"

Scope of Work

Project Information

Project Name: Arboriculture Services
Project Manager: Peter Carris, Forestry-Natural Resources Manager
Project Sponsor: Robert Fimbel, Natural Resources Manager
Executive Sponsor: Larry Fairleigh, Assistant Director

Project Type & Effort

Project Type: Contract Services
Financial Type: Time & Material
Approximate Hours: 30 (3 – 10 hour days)
Approximate Start Date: April 28, 2008
Approximate End Date: April 30, 2008

PROJECT DEFINITION

Project Description:

United States Fish and Wildlife Services (USFWS) has requested use of Washington State Parks and Recreation Commission (WSPRC) Arbor Crew-East crew to prune and remove trees located on USFWS property addressed as Spring Creek National Fish Hatchery, 61552 SR 14, Underwood, WA 98651

It is the intention of USFWS to retain our crew on a daily and hourly basis to professionally prune and remove hazard trees in and around its hatchery facilities.

The agreed costs will be set at \$1000.00 (one thousand dollars) per day (based on a 10 hour day); or \$100.00 (one hundred dollars) per hour for a 2 (two) - person arboriculture crew with an one aerial lift and one brush chipper.

Since the Spring Creek National Fish Hatchery property is adjacent to property managed by PARKS, no travel time will be charged.

Project Contact:

Larry Marchant, Project Leader, USFWS
61552 SR 14
Underwood, WA 98651
Ph: 509-493-1730
Fax:509-493-2980

Billing Contact:

Debra Hogberg
61552 SR 14
Underwood, WA 98651
Ph: 509-493-1730
Fax:509-493-2980

PARKS does accept Visa and MasterCard for payment.

PROJECT

Pruning and or removal of dead, dying, hazardous trees and as determined by PARKS to be structurally unsound inside the area identified by the HATCHERY.

All activities performed under this contract shall conform to the most current published ANSI (American National Standards Institute) A 300 standards for pruning, and tree removal along with the most current published ANSI (American National Standards Institute) Z133.1 standards for safe arboricultural operations.

PARKS will be asked to provide all necessary transportation, supervision, labor, licenses, tools, equipment, insurances, services and expertise to be able to pruning and removal of evergreen and deciduous species trees in a professional arboricultural manner. It is required of the contractor to provide the necessary equipment and crew(s) to complete the work in the specified period.

PARKS shall comply with all applicable federal, state and local laws and codes regarding working conditions, hours of employment, overtime regulations, methods and rates of pay and any other regulations regarding employer-employee relationships.

/ / / / /
END SCOPE OF WORK